BLANK PAGE

FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 31 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

EXPRESS PUBLISHING COMPANY,
Respondent.

On writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR EXPRESS PUBLISHING COMPANY.

LEROY G. DENMAN,
Attorney for Respondent.

JUDD & DETWEILER, INC., PRINTERS, WASHINGTON, D. C.

BLANK PAGE

INDEX

Opinions below 1

Statement 2-6

Propositions 6

Argument:

On 1st proposition 7-14

On 2nd proposition 15-17

On 3rd proposition 17-23

Conclusion 23-25

AUTHORITIES

Burlington, etc. Co. vs. N. L. R. B., 104 Fed. (2d) 736 21

N. L. R. B. vs. Abell Co., 97 Fed. (2d) 951 21

Swift & Co. vs. N. L. R. B., 106 Fed. (2d) 87 21

BLANK PAGE

IN THE

Supreme Court of the United States

October Term, 1940.

No. 442

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

EXPRESS PUBLISHING COMPANY,
Respondent.

On writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR EXPRESS PUBLISHING COMPANY.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals R. I. 85-85, is reported in 111 F. (2d) 588; that of the National Labor Relations Board, R. I. 52-73, is reported in 13 N. L. R. B. 1213.

STATEMENT.

The respondent does not agree with that portion of petitioner's statement describing the bargaining proceedings, the nature of the complaint and the opinion of the court below. In response thereto the respondent submits the following:

The facts in reference to the bargaining were undisputed. The negotiations were reported by a court reporter. His transcript and copies of the correspondence were stipulated. As shown by the stipulation, in the early part of March, 1938, the Guild asked for a meeting to bargain, R. III. 11-12. The Respondent promptly recognized the Guild and fixed a date for meeting, R. III. 13, accepted by the Guild, R. III. 14. On March 14 the first meeting was held and the Guild submitted a proposed contract. The bargaining was well launched at this meeting. The contract submitted by the Guild, R. III. 141, proposed a considerable raise in wage scales, relinquishment by the employer of a large part of its power to employ and discharge in its editorial and news department, large expenditures for health and accident payments, large severance wage payments, etc. The employer, on the other hand, R. III. 17-18, contended that Respondent had maintained just and impartial relationships toward the employees; that conditions of employment, including vacations with pay, sick leave, retirement pensions and existing wage scale, were fair. The Respondent agreed to take the

Guild's contract and consider it and meet again. On the 25th of March Respondent itself requested the Guild to meet for further bargaining, and on the 30th the meeting was had, and the Respondent gave a written detailed statement of Respondent's objections to the proposed contract, not merely stating that it was unreasonable as contended by Petitioner, but giving in detail, paragraph by paragraph, the grounds of Respondent's objections. There succeeded lengthy discussions, R. III. 25, et seq., at that and several additional meetings. In the course of the discussions the Guild representatives admitted again and again that the proposed contract submitted by them was unreasonable and unwarranted.

> Mr. Dielman (one of the Guild's negotiators)—"and I think Mr. Ragsdale (the Guild president, another one of the Guild's negotiators) personally made the statement that we know at the present time that such a scale would be out of the question." R. III. 46.

At the next meeting the Guild presented the same contract. Further discussion was had of it and at the next meeting the same contract was again submitted by the Guild and again the Guild's representatives admitted in the words of Mr. Ragsdale, its president,

> "The Guild, in this last meeting we had in Mr. Huntress' absence, specifically stated that it wanted it understood that the contract pro-

> posed was a basis for negotiations; that we had no idea that we were going to get the wages set out there, although we thought those wages were right; but conditions were not right to get them." R. III. 118.

And again Mr. Dielman, another of the Guild's negotiators, said,

> "I believe the members of the Guild realize that even though they consider the contract submitted is a fair contract, Mr. Huntress, that it would probably not be justified under present conditions obtaining in San Antonio. Isn't that about right? In other words, it is a fair contract for a basis of discussion. It may not be warranted in all of its provisions at the present time." R. III. 119-120.

After a number of meetings and lengthy discussions, the report of which contained approximately 150 pages, the negotiations were terminated by the Guild, the Respondent advising the Guild that it would be ready to continue them at any time the Guild desired, R. III. 123. Throughout the proceedings the Guild recognized the good faith of the Respondent in the negotiations. The president of the Guild, one of the negotiators, R. III. 93, said:

> "Mr. Ragsdale: If the Express Publishing Company can read into this statement of sincerity any intent of the Guild to now or previously question the sincerity of the publisher, I say if you can, then I deny that it is there.

> * * * I say I deny that there is any intent to question the sincerity of the publisher. In my mind there will never arise a question as to his sincerity. I believe that he is sincere and I have stated so previously in these conferences."

And again, R. III. 100:

> "Now I don't think as far as any threats as to the National Labor Relations Board is concerned, if we are willing to go that far, (referring to his disclaimer of intentions to go before the Board) I think it ought to show our sincerity, that we believe the publisher is sincere, and all we want to do is to sit here and talk the thing over and get our side of it as well as the publisher's side into the record."

Those statements were made near the close of the bargaining.

The complaint in this proceeding filed by the Petitioner did not charge bad faith. On the contrary, it limited its charge of failure to bargain to the bare charge that the Respondent did not accept the Guild's proposal and did not submit a counter proposal. The charge in reference to the bargaining count first states that the Guild requested Respondent to bargain; that the parties met and that

> "Respondent did refuse, has refused and does now refuse to bargain collectively with said San Antonio Newspaper Guild as the exclusive representative of all the employees in

said Union **in that** though Respondent met with the representatives above named and expresses itself as willing to meet again, the Respondent has **consistently refused to agree to any request made by the Union and has refused to offer any character of counter-proposal to said Union.**" (Emphasis ours).

Complairt, R. I. 13.

PROPOSITIONS.

1. There was no evidence that Respondent failed or refused to bargain collectively in good faith.

2. The complaint having limited the charge of failure to bargain to a failure to agree to the Guild's proposal and an alleged failure to submit a counter proposal and having made no charge of failure to bargain in good faith, the Respondent cannot be found guilty of failure to bargain in good faith.

3. The Board has no power to require Respondent to sign a confession that it has been guilty of unlawful practices because such requirement would infringe upon the freedom of speech guaranteed by the First Amendment to the Constitution, since liberty of speech includes freedom to be silent, and would violate the provisions of the Fifth and Fourteenth Amendments of the Constitution guaranteeing due process of law, and would exceed the power vested in the Board which did not include the power to punish by requiring the posting of confessions by parties denying the truth thereof.

ARGUMENT.

1. **Good faith bargaining.** One of the unusual features of this case, is that although the Guild representatives were promptly recognized and negotiations conducted at great length, just because an agreement was not arrived at, the Board finds that the employer did not bargain in good faith. It is noteworthy that the complaint did not charge lack of good faith. In fact, at the time it was filed the Board was contending that bargaining, as a matter of law, required the employer to make an offer. But, when after the hearing in this case there were decisions of the Circuit Courts refusing to follow that theory, the Board changed its position without any amendment of the complaint or further hearing to the claim of bad faith. The record shows that Respondent in good faith endeavored to persuade the Guild to come around to its point of view, to realize that the contract the Guild was seeking, as the negotiators finally admitted, was unreasonable and out of the question, and also to realize that the present employment conditions were fair. The Guild used one sort of trading method, the Respondent another. The Guild was somewhat aggressive, as it, of course, had a right to be. As its opening gun fired at the first meeting, Mr. Ragsdale, the president of the Guild, stated that

> "Most of the people who are members of the Guild"

have no idea

> "—as the saying is, to put the 'bee' on the Express." R. III. 19-20.

And again, from time to time, he uses language showing his consciousness of the employees' power, referring to their not desiring to embarrass or injure the Respondent, and again, not intending

> "to pin the publisher down to something he does not feel he must honestly go into." R. III. 94.

And again,

> "As to our attitude towards the publisher of the Express Publishing Company, we have always maintained the highest respect for his ability and for his integrity and we trust that nothing will transpire to cause us to regard him otherwise." R. III. 66.

And again, in referring to the custom of the Respondent to grant pay during sickness, etc.,

> "They have been extended without expense to the Express Publishing Company. The only burden involved was that which fell upon the employees themselves, who did the work of their absent colleagues so that they would have access to the same consideration." R. III. 67.

The Respondent being in the position of employer anxious to maintain satisfactory relationship with its employees, patiently sought to convince them

without antagonizing them. Although the contract proposed by the Guild contained such obviously unreasonable provisions as "full pay for the entire duration of illness", Article IX, 1 of the proposed contract, R. III. 147, under some circumstances and for long periods under others; provisions requiring that the office boys should be given first opportunity to fill vacancies in the editorial department, etc., the Respondent refrained from any undue criticism of the Guild's proposals and patiently sought to convince them that the present wage scales and other terms were as good as could be expected under present conditions. In reference to the matter of good faith the negotiators throughout the proceedings expressly disclaimed any intent to question the good faith or sincerity of the Respondent, and conceded its good faith and sincerity (see quotations in the statements from R. III. 93, R. III. 100); and in the complaint filed Respondent's good faith was not questioned.

The complaint limited the charge of failure to bargain to refusal to accept the Guild's proposal or make a counter proposal. It is correct that the Respondent did refuse to agree to the one and only proposal submitted by the Guild which the Guild admitted to be unreasonable and unwarranted under present conditions. In reference to the submission of a counter proposal, it submitted one only in the sense that it continuously stated that it believed the present wage scale and terms of employment to be

satisfactory. We regard the Respondent's statements that the present terms should be considered satisfactory as a counter proposal. It cannot be said that no counter proposal was submitted, unless it be contended that to be a counter proposal there must be an offer of a raise in wages or a change in terms of employment. The Wagner Act does not mean that every time a raise in wages is asked the employer must submit a counter proposal of at least some raise. It is clear that he is within his rights if he submits a counter proposal of continuing the same scale or lowering it. The fact that the parties did not agree does not constitute failure to bargain. Mention is made by the Board of arguments employed by the Respondent. In most instances the record is not stated sufficiently to give a correct reflection of what occurred. For instance, Petitioner contends that Respondent was in bad faith because by a contract with the Typographical Union, R. IV., the Respondent for many years had given to that Union a large portion of its power to employ and discharge, etc., and yet was refusing it to the editorial department. There is nothing to indicate bad faith in that. It is easy to see why the publisher of a newspaper may willingly share or entirely delegate to another the power to choose and discharge mechanical workers, but would want to retain the power to choose those charged with speaking his thought in editorials and following his policies in reporting the news. No one but the publisher can

judge when (as President Wilson stated in calling for Lansing's resignation) "another's mind goes along with mine." Mechanical skill to operate machinery is susceptible to standardization and skilled mechanics agree upon qualifications of workers. But there is no standardization possible or advisable in editorial and news policies. Newspapers differ among themselves and it is in the multitude of differences of opinion emanating from the freedom of each publisher to voice his own policies that journalism in democratic countries differs from journalism in autocratic and totalitarian states. Regardless of whether the Guild or the Board agrees with the publisher in the importance of maintaining his freedom to choose his editorial employees, we do not think it can be said that it evidences bad faith or failure to bargain for him to insist upon retaining that freedom in the editorial department just because he has surrendered part of it in a mechanical department.

The Petitioner views the opinion of the Circuit Court of Appeals as affirming the Board's findings of fact. We do not think it does so. The opinion is brief, but it is evident that the reason it set aside the Board's order was because it did not agree with the Board's findings, and was sustaining Respondent's assignments that there was no evidence to support the findings. It is true that there are some ambiguous statements in the court's opinion; for instance, it states that Respondent had determined

in advance never to agree to anything, using language which taken alone might indicate that the court thought this as a matter of law was a failure to bargain, but in the very next sentence it shows that this was not its literal meaning by stating:

> "Of course Respondent was not bound to make any agreement and technically it was not bound to make a counter proposal, but it was required to meet its employees with an open mind, **and if it was unwilling to do more than maintain its present status, to say so and to express a willingness to have that as the agreement between them.**" (Emphasis ours).

The Petitioner has been contending that the Respondent did from the first insist on maintaining its present status. As a matter of fact, the record shows that although the Respondent argued from the beginning that the present terms of employment should be considered satisfactory, it did not close the door by any means to negotiation and bargaining over whether the Guild's proposals should be accepted, and each party gave the other full opportunity to persuade it to change its position.

The burden of the Petitioner's argument is that unless Respondent is willing to yield something, no bargaining is had. We do not conceive that to be a reasonable interpretation of the Act. The Act does not require agreement. Neither party can be forced to make an agreement. To require a proposal would

be tantamount to requiring an agreement, for every proposal, if accepted, becomes a contract. Nor does the Act require parties not to have opinions. Opinions are beyond the control even of the person himself. If an employer, when meeting for bargaining purposes, already has a fixed opinion that he cannot afford to pay higher wages, it may well be that it is beyond his own power to change that belief. There is nothing in the Wagner Act that forbids either of the parties from entering into the bargaining with an opinion already arrived at. Preconceived opinions do not indicate bad faith. It might as well be argued, when a judge at the outset of a hearing already has an opinion of what the law is, that he is therefore conducting the hearing in bad faith, regardless of how patiently he considers counsel's argument. The Act contemplates that each of the parties shall be free to negotiate; each may take his respective position and maintain it with ever so much steadfastness, providing the employer in good faith enters into the bargaining and gives the employees full opportunity to induce him to change his mind. Each of the parties owed a duty to enter into the negotiations to see if either could be induced to yield, but the Wagner Act does not require either to yield. Any other interpretation of the Act would be abhorrent to the very term "bargain."

The issue between the parties was clear-cut. The Guild had definitely made up its mind that it wanted a large degree of influence in the matter of deter-

mining the personnel of the editorial department; that it wanted fixed pay for fixed lengths of time with substantial severance pay upon discharge, regardless of cause therefor; sick leave pay for long periods, etc.; that it might partially relinquish its demands on the wage scale, but not on the other terms. The employer, on the other hand, desired in his editorial department the right to employ whom he saw fit, without discrimination between union and non-union employees, with untrammeled right to terminate the employment according to his own belief of incompetency, giving the employee a corresponding right to terminate the employment. It is apparent that the employees honestly believed that their security would be assured by the contract; that the publisher honestly believed that it would be unwise for him to relinquish the power to choose and discharge the employees of the editorial and news departments as he had done in the mechanical departments. The employees stood on their proposal as they were entitled to do so, no matter how unreasonable it might be. The Respondent stood on its present wage scales and its present freedom of employment and discharge. The Respondent did not shut its ears to the Guild's proposals. It listened to them, discussed them, argued about them. But it was **not convinced.** The Wagner Act does not require it to agree to the proposals when it is not convinced.

2. **Complaint did not charge bad faith.** The complaint, as above stated, limited the charge to a failure to agree to the Guild's proposition and the alleged failure to submit a counter proposal, R. I. 13, and made no charge of failure to bargain in good faith. The Board, however, proceeded to make a finding that the Respondent's bargaining was not conducted in good faith on Respondent's part. While a liberal procedure is authorized, the Board must afford to the parties the essential elements of a fair trial. Among those essential elements is the right to be informed of the nature of the accusation. That right has been deemed so important that in criminal cases in the Bill of Rights in the Federal Constitution it is guaranteed in ARTICLE VI. We believe the rules of almost any civilized country, in civil proceedings as well, require that the parties be advised, and that they be not tried on one charge and convicted on another. If the Board had desired to charge bad faith it would have been only ordinary fairness to do so in the complaint and allow the Respondent to offer evidence on the subject. Instead, Respondent was beguiled by the constant and candid protestations on the part of the Guild, quoted above, that they did not question the good faith of the Respondent. If the complaint had made such a charge the Respondent would have had an opportunity to offer specific testimony and join issue thereon; but the trial was conducted on the complaint charging failure to bargain based solely on the legal theory

that a failure to accept the Guild's proposition and the alleged failure to make counter proposals constituted a failure to bargain. The Wagner Act recognizes the fundamental right of the Respondent to be informed of the nature of the accusation. It provides:

> "The Board * * * shall have the power to issue and cause to be served upon such person a complaint stating the **charges in that respect."**

The Board has simply found the Respondent guilty of something that was not charged in the complaint in finding it guilty of a lack of good faith.

The importance of the principle involved is illustrated by what happened in the other count in the complaint. The other count was that Hall, Respondent's agent, read a statement **"intending to"** discourage membership in the Guild. Thus, on that count the Petitioner raised the issue of the mental process involved in reading the statement. Respondent undertook to meet that issue with testimony and offered Hall's oral testimony in reference to his intention. The Petitioner objected to the testimony and the examiner overruled the objection upon the ground that his intention had been made an issue by the complaint. The Petitioner thereupon amended the complaint so as to strike out the reference to intention and aver that the statement had the effect of discouraging membership. Hall's testimony as to his intention was thereupon omitted and Re-

spondent offered testimony instead that no one was discouraged from membership in the Guild. Before the Board and the Circuit Court of Appeals the Petitioner again tried to raise the question of intention, the undisputed evidence having shown that no one was in fact discouraged from membership. The Circuit Court of Appeals held that the amendment precluded inquiry into intention and since there was no evidence of membership having been discouraged, found for Respondent on that count. As stated by Petitioner in its brief, that count is not before this court, since Petitioner does not complain of the Circuit Court of Appeals' ruling thereon, but we point to it to illustrate the fact that exactly the same situation is occurring in reference to the bargaining count. The Petitioner in the complaint in the bargaining count from the very beginning expressly limited the complaint of failure to bargain to a failure to agree to the Union's proposal and refusal to offer a counter proposal. It would not constitute a fair trial to permit it now to change the issue to one of good faith.

3. **Board's order requiring Respondent to post a confession of guilt.** The Board's order after ordering the Respondent to cease and desist from refusing to bargain collectively with the Guild and from interfering with, restraining or coercing its employees in the exercise of their rights of self organization, forming, joining and assisting labor organization, bargaining collectively and engaging in

concerted activities for collective bargaining or other mutual aid and protection as guaranteed by the Act, proceeded to order the Respondent further to post notices in conspicuous places

> "Stating (1) that Respondent will cease and desist as aforesaid, and (2) that Respondent will bargain collectively"

with the Guild, etc.

A statement by Respondent that it will cease and desist from doing the things above mentioned cannot have any other meaning to one familiar with the English language than that the Respondent confesses that it has been guilty of such practices. The matter of requiring or extorting confessions has had a long and somewhat unhappy history in jurisprudence. Confessions were obtained by torture in the most civilized countries through long ages. But at an early date in English speaking countries the practice was discarded, and finally the European continental countries abandoned it also, though with much reluctance, for some contended that when enforced confessions were abolished.

> "Justice lost her chief handmaiden."

The forced confession was retained until a late date in countries living under the civil law. It was used not only to obtain evidence but as a means of punishment. For example, in France it was often required just before execution. The **Amende Honor-**

able was defined by Cotgrove as: "a most ignominious punishment inflicted upon an extreme offender who must go * * * in some public place and there confess his offense to the aggrieved party." This device served two great purposes: first, it administered bitter punishment to the spirit of those indomitable souls who could not be crushed by physical pain; second, it solaced the consciences of the government tribunals and quieted the doubts of a skeptical public as to the real guilt of the convicted man. The **Amende Honorable** was abrogated in France in 1791 after the fall of the Bastile along with other punishments deemed dishonorable to individual liberty. It was re-established during the Bourbon restoration but only in cases of sacrilege and finally abolished in 1830 upon the second overthrow of the Bourbons.

But English speaking countries governed by the common law developing the theory of the personal liberty of the individual always abhorred the forced confession. Although sometimes employed by executive authorities and extraordinary tribunals such as the Star Chamber Courts, it was the glory and pride of the Common Law Courts that they never recognized its legality. Efforts to introduce the civil law system into England were resisted most effectively by the argument that the forced confession with its incidents of torture of the body and humiliation of the spirit of free men would necessarily follow.

Greater and greater safeguards were thrown around the citizen to prevent the law enforcement officers from abusing the citizen's right to be freed from such tyranny. These provisions took various forms in the civil and criminal jurisprudence. In criminal matters they protected the citizen by providing that he shall not be compelled to give evidence against himself. Safeguards were thrown by law around the citizen to be sure that any confession was a voluntary one, providing during arrest for explanation by a magistrate that the confession is not required of him and that it may be used against and not for him. In civil matters various corresponding safeguards were adopted, varying to meet the exigencies of different situations. Freedom of speech was guaranteed, which the courts have uniformly held to include the freedom to be silent. It was provided that no person should be deprived of liberty without due process of law, "no cruel and unusual punishments inflicted." The practice of extorting confessions had been so thoroughly anathematized by law, and the citizen's safeguards against it had been built up around him by the courts into such a bulwark, that the practice on the part of governments of extorting confessions had appeared throughout the world to be nothing more than a forgotten page in history. But recently the western world has been amazed at the sudden plunge backward of many of the European governments into the tyrannies of the past, and have read with as-

tonishment the accounts of the wholesale confessions to most extraordinary and unbelievable crimes, publicly made as the result of what every intelligent American citizen knows to be orders from some government tribunal. There is nothing in the Wagner Act that gave the Board the power to adopt this alien penalty and import it to American soil. This is not an unimportant matter of procedure. That portion of the Board's order is not an inadvertent substitution for an order to cease and desist. The principle involved was ably announced in **N. L. R. B. vs. Abell Co.**, 97 Fed (2d) 951, followed in **Burlington etc. Co. vs. N. L. R. B.**, 104 Fed. (2d) 736 and in **Swift & Co. vs. N. L. R. B.**, 106 Fed. (2d) 87.

As shown by the cases cited by Petitioner, some of the circuit courts of appeals agree and some disagree with the Abell case, and they are in disagreement as to whether this court decided the question in the Falk case.

In the Abell Co. case the Circuit Court of Appeals pointed out a simple way to enforce the provisions of the Act without the unjust requirement of a "confession" from one who is disputing the truth of what he is required to "confess." That the question is not a mere matter of accidental phraseology is demonstrated by the fact that although in the Abell case the Court pointed out a fair manner in which to frame the order to avoid the "confession" of guilt, the Board persists in following the form involving such "confession." It is no answer to say

that an unwilling confession should not be held against a party. It is the unwilling confession that is condemned by law. The Board is tenaciously maintaining its position that it has such authority. The purpose is obvious. Congress gave the Board wide powers in determining facts and enforcing the collective bargaining process; but it gave it no power whatever to punish. It wisely reserved that power to the courts, so that punishment should not be meted out by a non-judicial body. But there could be no more bitter form of punishment devised than to force a confession of guilt. It is one which the courts relinquished long ago. In a court of justice, even when a defendant wants to confess, the court carefully inquires into the circumstances of the plea of guilt in order to be sure that it is not only justified by the facts, but is voluntary. It is common knowledge that in the days of western lawlessness an individual could inflict no more galling punishment upon his enemy than to force him to sign "a lie bill." Every court in our country is passing almost daily upon applications for injunction and issuing them where it finds justification therefor. But what court of justice in the country would entertain for a moment a request on the part of a plaintiff that the fiat prayed for not only restrain the defendant but also order him to post a notice admitting his guilt? Certainly when Congress refrained from giving the Board any power to enforce its orders or inflict punishment, it did not intend to confer upon it the

power to inflict a punishment which has been denied even to the courts. The courts in spite of the broad and general powers conferred upon them have never assumed any such power, but on the contrary have zealously guarded all persons against the exercise of such power by executive officers or other governmental officials.

CONCLUSION.

We believe it to be evident that the Circuit Court of Appeals, after reviewing the record, concluded that there was no evidence to support the Board's findings of fact in reference to the failure to bargain. If it had intended by its opinion to approve the Board's finding, it would doubtless have approved the order, for the court has uniformly followed that procedure. Of course, it sustained that part of the Board's order directing the Respondent to continue the bargaining upon the Guild's request, for under the Act that is a continuing duty on the part of the Respondent. Its refusal to enforce the remainder of the order can mean only that it found no evidence to support the Board's finding. Its criticisms of both parties' method of negotiation are in effect admonitions to them as to how the negotiations should be continued.

We submit that the evidence shows that the Respondent's policy of retaining a free hand in employment and discharge, demoting and advancing

in the editorial and news departments was arrived at in good faith and has been continued without variation since the founding of its newspaper and constitutes a part of the policy it believes wise in order to maintain its position as an independent newspaper. The maintenance of that independence is not an easy matter. It must withstand the influence of political interests, financial interests, other powerful publishers, and many other interests seeking to influence its editorial expression and the interpretation of the news. The Wagner Act imposes a duty upon Respondent to bargain collectively with its employees as to whether it is willing to relinquish or restrict those rights; but it does not impose any obligation upon Respondent to be persuaded in such bargaining to contract away any freedom to conduct its editorial and news departments according to its own beliefs as to the manner in which they would best serve its function as a free press, subject, of course, to its obligation not to interfere with the right of its employees to organize and bargain collectively. The fallacy in the Board's order is that it is based upon the theory that the Act imposed upon the Respondent not merely the obligation to bargain with the Guild as to whether it is willing to barter away such freedom, but also the obligation, even though not convinced by the Guild, to nevertheless enter into a contract limiting its rights in these respects.

We believe the evidence shows that it is Respondent's sincere belief that in its own newspaper it is not wise to enter into an agreement fixing arbitrary standards of advancement of employees in its editorial and news department according to longevity of service or any other artificial standard, or for their employment or retention other than according to the publisher's belief in their professional ability and their ability to aid best in enunciating editorial principles represented by Respondent's newspapers.

Respectfully submitted,

Leroy G. Denman

Attorney for Respondent.